

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

VICKIE TAYLOR

PLAINTIFF

v.

CIVIL ACTION NO. 3:20-cv-162-HTW-LRA

WALMART TRANSPORTATION, LLC;
TERRY HERNDON; AND JOHN DOES 1-10

DEFENDANTS

NOTICE OF REMOVAL

TO: Gerald L. Kucia, Esq.
MORGAN & MORGAN
4450 Old Canton Road, Suite 200
Jackson, Mississippi 39211

Zack Wallace, Clerk
Hinds County Circuit Court
P.O. Box 327
Jackson, Mississippi 39205

Defendants Walmart Transportation, LLC (“Walmart”) and Terry Herndon (“Herndon”), by and through counsel, file this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and in support of this removal, Defendants respectfully submit as follows:

1. The Plaintiff filed her Complaint on or about January 30, 2020 in the Circuit Court of Hinds County, Mississippi, First Judicial District. The Complaint was docketed in that court as *Vickie Taylor v. Walmart Transportation, LLC; Terry Herndon; and John Does 1-10* bearing Cause No. 20-68. Exhibit A – Complaint.

2. The United States District Court for the Southern District of Mississippi, Northern Division, embraces the county in which the State Court Action is now pending. Therefore, removal is proper to this Court pursuant to 28 U.S.C. §§ 104(b)(3) and 1441(a).

3. As set forth below, this Court has original subject matter jurisdiction of this civil

action pursuant to 28 U.S.C. §§ 1332 and 1441 because there is complete diversity of citizenship between Plaintiff and all properly joined Defendants, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Removal is Based on Diversity Jurisdiction

10. Citizenship of the parties is determined as of the time the Complaint is filed. *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 571 (2004).

11. According to the Complaint, Plaintiff Vickie Taylor is a resident citizen of the State of Mississippi. Exhibit A - Complaint at ¶ 1.

12. Walmart Transportation, LLC, a Delaware limited liability company, is an indirectly, wholly-owned subsidiary of Walmart Inc. (formerly known as Walmart Stores, Inc.). The principal place of business of Walmart Transportation, LLC is Bentonville, Arkansas. The direct parent is Walmart Stores East, LP, a Delaware limited partnership, of which WSE Management, LLC is the general partner, and WSE Investment, LLC is the limited partner. WSE Management, LLC is a Delaware limited liability company, and has its principal place of business in the State of Arkansas. WSE Investment, LLC is a Delaware limited liability company, and has its principal place of business in the State of Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Walmart Stores East, LLC, whose parent company is Walmart Inc. (formerly known as Walmart Stores, Inc.). Walmart Stores East, LLC is a limited liability company formed under the laws of the State of Arkansas and has its principal place of business in the State of Arkansas. The sole member of Walmart Stores, East, LLC is Walmart Inc. (formerly known as Walmart Stores, Inc.). Walmart Inc. is an incorporated entity under the laws of the State of Delaware and has its principle place of business in the State of Arkansas.

13. Terry Herndon is a resident of the state of Arkansas. Exhibit A – Complaint at ¶ 3.

14. Because Plaintiff and all properly joined Defendants are citizens of different States, in accordance with 28 U.S.C. §1332, complete diversity is satisfied.

Amount in Controversy

15. The amount in controversy exceeds \$75,000.00, exclusive of interests and costs. The Plaintiff does not specify an amount of damages in the Complaint. However, it is facially apparent that the amount in controversy exceeds \$75,000.00. See, e.g., *Allen v. R&H Oil & Gas Co.*, 63 F. 3d 1326 (5th 1996). Moreover, Plaintiff's responses to Defendant's First Set of Requests for Admissions, clearly indicate that the amount of damages claimed by Plaintiff exceeds \$75,000.00. Exhibit B – Plaintiff Vickie Taylor's Responses to First Set of Requests for Admissions Propounded by Defendant Walmart Transportation, LLC.

16. Plaintiff Vickie Taylor contends she suffered "serious physical injuries." Exhibit A – Complaint at ¶ 12. She further contends she is entitled to actual, compensatory, incidental and consequential damages for physical injury as well as compensation for past, present and future pain and suffering; past, present and future medical expenses; lost wages; loss of wage earning capacity; any other special damages that may be incurred by her; and, attorneys' fees and costs of suit. See the final unnumbered paragraph of the Complaint beginning "Wherefore Premises Considered."

17. As it is facially apparent from both the Complaint and from Plaintiff's responses to Defendant's First Set of Requests for Admissions that the amount in controversy exceeds \$75,000.00, exclusive of interests and costs, this requirement for diversity jurisdiction is met. See 28 U.S.C. §1332.

Timeliness of Removal and Other Procedural Requirements

18. The Complaint was filed on January 30, 2020. Terry Herndon was served with process on February 19, 2020, and Walmart Transportation, LLC was served with process on or about February 21, 2020.

19. This Notice of Removal, therefore, is timely filed under 28 U.S.C. §1446(b)(1) within thirty (30) days after the receipt of the initial pleading by Defendants from which Defendants could ascertain that the case is properly removable in accordance with the provisions of 28 U.S.C. §1446(b).

20. In accordance with 28 U.S.C. § 1447(b) and L.U.Civ.R. 5(b), Defendants are submitting a copy of the state court pleadings no later than 14 days from the date of removal.

21. Contemporaneously with the filing of this notice of removal, Defendants are filing a copy of the same with the Clerk of the Circuit Court of Hinds County, Mississippi, in accordance with 28 U.S.C. § 1446(d). Additionally, written notice of the removal is being given to all parties.
Id.

WHEREFORE, Defendants Walmart Transportation, LLC and Terry Herndon respectfully request that this Court proceed with the handling of this case as if it had been originally filed herein. Defendants also respectfully request such other relief as this Court deems just.

THIS the 16th day of March, 2020.

Respectfully submitted,

WALMART TRANSPORTATION, LLC and
TERRY HERNDON

By Their Attorneys

DunbarMonroe, PLLC

s/ David C. Dunbar

David C. Dunbar

OF COUNSEL:

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CERTIFICATE OF SERVICE

I, the undersigned attorney for Defendants, Walmart Transportation, LLC and Terry Herndon, hereby certify that I have this day filed the above and foregoing Notice of Removal via ECF and upon the filing of same a true and correct copy was served via MEC to the following interested parties:

Gerald L. Kucia, Esq.
MORGAN & MORGAN
4450 Old Canton Road, Suite 200
Jackson, Mississippi 39211

Zack Wallace, Clerk
Hinds County Circuit Court
P.O. Box 327
Jackson, Mississippi 39205

THIS the 16th day of March, 2020.

s/ David C. Dunbar
David C. Dunbar